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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
) RM 8535

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COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG"), pursuant to the Commission's March 14, 1996 Notice in the above-captioned matter, hereby offers the following comments.¹

I. THE ACT RATIFIES THE FCC'S CONCLUSION THAT PERMANENT NUMBER PORTABILITY IS ESSENTIAL TO LOCAL EXCHANGE COMPETITION.

In drafting the Telecommunications Act of 1996 ("Act")², Congress recognized that number portability is an essential element of robust local exchange competition. The Act places a general duty on all carriers to provide number portability when a permanent solution becomes available. In the meantime, the Regional Bell Operating Companies ("RBOCs") are required under the "competitive checklist" to provide interim number portability to entrants as a condition of entry into the interLATA market. The Act further directs the FCC to promulgate rules in accordance with the Act within six months of enactment.

In establishing number portability as an essential element

¹ *Telephone Number Portability*, CC Docket No. 95-116, Notice, DA 96-368, (released March 14, 1996).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

of local exchange competition, the Act ratifies the tentative conclusions reached by the Commission in its Notice of Proposed Rulemaking, and in fact makes number portability the "law of the land".³ There is, therefore, no longer any question of "whether" there should be number portability -- the only real issue is what type of service provider number portability should be implemented, and how soon it can be in place. The Act also grants this Commission exclusive jurisdiction over number portability issues under the Act.⁴ The Commission's duty, therefore, is to act quickly and decisively to make number portability a reality in the marketplace as soon as possible.

II. THE ACT REQUIRES PERMANENT SERVICE PROVIDER NUMBER PORTABILITY WITHOUT A COST/BENEFIT ANALYSIS BY THE FCC.

A number of incumbent local exchange carriers ("ILEC") in their original comments in this proceeding argued that the Commission could not order that service provider number portability ("SPNP") be implemented without engaging in a detailed and time-consuming cost/benefit analysis.⁵ While TCG and others strenuously disputed that argument, the issue has been made moot by the Act. The Act *requires* that all local exchange carriers have the duty to provide permanent SPNP to the extent

³ *Telephone Number Portability*, Notice of Proposed Rulemaking, 10 FCC Rcd 12350 (1995) at ¶¶ 2-7.

⁴ 47 U.S.C. § 251(e)(1).

⁵ See NYNEX comments at 2; Bell Atlantic comments at 8-9.

technically feasible".⁶ The Act does not require a showing of financial feasibility, and thus no analysis of costs and benefits is fitting. In passing the Act, Congress itself determined that the benefits of permanent SPNP outweighed the costs. To underscore the significance of SPNP, it was included in the competitive checklist as an essential element of local exchange competition.⁷ Rather than engage in a needless cost-benefit analysis -- the answer to which Congress has already spoken -- the Commission must order permanent SPNP since it is technically feasible today.⁸

III. THE ACT REQUIRES A COMPETITIVELY NEUTRAL COST RECOVERY MECHANISM.

The Act requires that the "cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis."⁹ Thus, the Act ratifies TCG's recommendation in its original comments in this proceeding.¹⁰ While the exact cost of implementing SPNP is yet unavailable,

⁶ 47 U.S.C. § 251(b)(2).

⁷ 47 U.S.C. § 271(c)(2)(B)(xi).

⁸ Switch vendors participating in Illinois and Maryland Workshops have committed to having switch generics for Local Number Routing ("LRN") available in the second quarter of 1997. Of course, if the FCC does not take swift action and mandate LRN as a national solution, as TCG suggests in section V of this comment, that target date could be delayed.

⁹ 47 U.S.C. § 251(e)(2).

¹⁰ TCG Comments at 12.

Congress recognized that only competitively neutral cost recovery would promote competition.

Competitive neutrality would dictate that no carrier pay for upgrades in another carrier's network -- after all, in a competitive market Ford is not required to upgrade Toyota's plants. Thus, each carrier should fund their own internal costs, as would be the case for any other network upgrade.

The Commission should further mandate that all internal costs necessary to implement number portability must be recovered without the use of a "number portability" surcharge. Explicit surcharges on customer bills are not "competitively neutral" because they would promote hostility towards number portability as a concept, and towards competitors as the potential users of ported numbers. RBOCs did not include a "divestiture surcharge" in their rates to pay for the costs of that change in the industry structure, and should not include such a surcharge in their customer's bills to pay for a central element of the next change in the industry. The use of such surcharges would also raise difficult and unnecessary questions about whether the proper amount is being included in the surcharge -- or whether the proper name is being applied to the surcharge.¹¹ Thus, explicit surcharges would run counter to the pro-competitive

¹¹ TCG would observe -- only somewhat facetiously -- that an RBOC's costs for number portability are as much a price it is paying for entry into the long distance market as a cost that is helping to encourage competition. Viewed in that light, a "Number Portability Surcharge" could be renamed as a "Bell Company Deregulation Surcharge".

intent of the Act.

Shared costs, such as those for third party database administration, should be funded by all carriers in proportion to the number of lines served. One alternative proposed by some RBOCs -- to require each market entrant to pay an equal amount as the incumbent -- would not be competitively neutral because the entrant as yet has few customers to draw funds from. With far fewer customers, the cost per customer would initially be so high that entrants could not possibly recover such costs and provide consumers with a competitive price. This would certainly run counter to the Act, since number portability is intended to increase, rather than decrease, an entrant's ability to compete.

IV. ONLY A NATIONAL DATABASE SOLUTION SATISFIES THE DEFINITION OF NUMBER PORTABILITY UNDER THE ACT.

TCG does not believe that anyone can seriously contend that differing local or regional SPNP solutions are in the public interest, and that therefore this Commission has an obligation to promulgate regulations to encourage the development of a consistent, national number portability solution. Moreover, it is equally clear that the so-called interim number portability solutions are only that -- interim, stopgap measures that should be replaced, as soon as possible, with genuine number portability.¹² Under such circumstances, the Commission must

¹² The Act makes this clear. Section 271 (c) (2) (B) (xi) identifies RCF and DID arrangements as interim solutions that are only to be used until a long term solution is available. Therefore,

promptly issue regulations to push forward the implementation of national number portability.

Even in the few months that have passed since the original comments were filed with the FCC in this docket, much has happened in the industry to move towards a consensus position on a national solution.¹³ For example, in its initial comments, the State of New York Department of Public Service (NYDPS) stated that a best long term solution had not yet been determined.¹⁴ Since then, however, the NYDPS has endorsed LRN as the best permanent SPNP solution.¹⁵ The Georgia Public Service Commission¹⁶ has also ordered that LRN be adopted as the permanent SPNP solution. Industry task forces in Colorado and Illinois have unanimously endorsed LRN. In the California and Maryland Workshops, all carriers other than the incumbents have endorsed LRN as the preferred solution.

LRN has, therefore, become the de facto national standard

both of these arrangements are expressly excluded by the Act from consideration as permanent SPNP solutions.

¹³ Original comments were filed September 12, 1995.

¹⁴ NYDPS comments at 7.

¹⁵ One of the benefits of LRN as a national number portability standard is that it would allow carriers to take advantage of economies of scale in providing number portability. Resources, such as third party and carrier-specific SMS database pairs, as well as costs for technical and administrative personnel, could be shared among two or more states

¹⁶ *Local Telephone Number Portability Under Section 2 of the Telecommunications Competition and Development Act of 1995*, Order, Docket 5840-U (Feb. 20, 1996).

for long-term number portability. TCG recommends that the Commission acknowledge and recognize this consensus by adopting LRN as its preferred approach. In so doing, the FCC would not preempt any state, but would be moving in concert with the strong national trend already in place.

VI. CONCLUSION.

The Telecommunications Act of 1996 gives the FCC exclusive jurisdiction over number portability standards. To implement the Act, the FCC must promptly implement permanent SPNP because it is currently "technically feasible". The Commission should adopt LRN as the nationally-recognized solution and standard. The Commission should further provide for competitively neutral recovery of costs, including requirements that (1) that internal costs be borne by each carrier on its own, (2) that "number portability surcharges" not be used, and (3) that shared costs be recovered from all carriers in proportion to the number of lines served in the relevant geographic area.

Respectfully submitted,
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